

What You Should Know About the City's Employees' Pension Fund Crisis:

- The City Attorney is committed to protecting the hard-earned pensions of all City employees. State law requires that a City's pension be sound but the pension fund is currently under funded by \$1.4 billion and in danger of collapse. This places the pensions of some 19,000 current and retired City employees at risk.
- The City Attorney has a fiduciary obligation to San Diego taxpayers. In that regard, his highest priority is to ensure that public monies are protected and may be encumbered only when financial decisions by elected officials are legal. Never again, should taxpayers be expected to be on the hook for illegal and unfunded pension benefits.
- Most of the \$1.4 billion massive pension debt accumulated because of agreements between the San Diego City Council and the San Diego City Employees' Retirement System (SDCERS) Board in 1996 and 2002 that allowed the City of San Diego to pay less than what was required to fully fund its pension obligations in exchange for granting increased benefits to employees. The 1996 agreement (Manager's Proposal 1) stipulated that if the pension fund ratio of assets to liabilities fell below 82.3%, it would trigger a balloon payment from the City to return the ratio to that level. By 2002, the ratio of pension assets to liabilities had fallen below the established level. A new agreement (Manager's Proposal 2) was approved that further increased benefits and decreased pension funding, and also changed the balloon payment trigger to a modified, phased-in payment.
- Upon his election in 2004, the City Attorney sought to restore his Office as the general counsel for the SDCERS. Up until 1997, the Office of the City Attorney had provided legal counsel to the SDCERS for several decades. In January 2005, SDCERS sued the City Attorney and the City of San Diego (*SDCERS v. San Diego City Attorney Michael Aguirre, The City of San Diego*) to prevent the city attorney from returning as general counsel. The City counter-sued arguing that the *quid pro quo* agreements in 1996 and 2002 created illegal benefits that should be rescinded in order to restore soundness to the pension fund. The City Attorney is personally arguing the case. Trial is expected to begin in October 2006.
- Various reports and investigations have been and are still being conducted by differing agencies into the pension matter, among them the Mayor's Blue Ribbon Committee on City Finances, Federal Bureau of Investigation (FBI), Securities and Exchange Commission (SEC), U.S. Attorney's Office, San Diego District Attorney, San Diego City Attorney.
- These investigations and reports include:

The Mayor's Blue Ribbon Committee on City Finances - 2002
Report understated the severity of the problem but warned that the pension system is at risk.

Seltzer Caplan McMahon Vitek – March 2003
Internal memorandum from SDCERS outside legal counsel, Seltzer Caplan McMahon Vitek concluded that likely conflict-of-interest violations occurred in the 2002 agreement; recommended that SDCERS invoke provision to unilaterally rescind agreement. The memorandum was not discovered until after a federal judge ordered SDCERS to waive attorney-client privilege in 2005.

United States Attorney/Securities & Exchange Commission – February 2004
Twin federal investigations launched into the genesis of the pension fund crisis and possible securities disclosure violations. In January, 2006 grand jury returned indictments against Lawrence Grissom, Retirement Board Administrator, Lori Chapin, Retirement Board Counsel and Ron Saathoff, President of Local Fire Fighters Union 127. Also named were Cathy Lexin and Terri Webster. Trial expected to commence in Fall 2006. Investigation is ongoing.

Vinson & Elkins – September 2004
Report concluded widespread "accounting irregularities" without finding wrongdoing. Auditing firm KPMG expressed doubts over this investigation and would not complete the 2003 City of San Diego audit until a more thorough investigation was done.

Luce Forward Hamilton & Scripps - February 2005
Memorandum to City Council warned of "significant risk" that some SDCERS board members violated state laws.

City Attorney Investigation – 2005 & ongoing
City Attorney Michael Aguirre issued numerous Interim Reports of alleged illegal practices on the 1996 and 2002 agreements that allowed pension under funding. Legal efforts were initiated to unwind the agreements and have certain benefits rolled back to "reasonable" levels.

Kroll Inc. –February 2005 – ongoing
Hired to reconcile investigative reports by the City Attorney and Vinson & Elkins in order for KPMG to complete the 2003 audit. Their investigation expanded exponentially, costing the City more than \$20 million. Kroll defied its stated deadlines and refused to provide itemized bills. City Attorney Aguirre characterized their lack

of accountability as “inexplicable and inexcusable” and Mayor Sanders likened their actions to “holding the City hostage.” City Attorney’s Interim Report #8 deals with Kroll’s breach of duty to the City. Kroll finally issued its report on August 8, 2006.

District Attorney Investigation – May 2005

Six SDCERS Board members were indicted regarding the 2002 pension agreement – Ron Saathoff, John Torres, Cathy Lexin, Mary Vattimo, Terri Webster and Sharon Wilkinson were named in the criminal complaint. All pleaded “not guilty.”

Navigant Consulting – January, 2006

Report commissioned by the SDCERS Board stated that the pension deals in 1996 and 2002 violated state and federal laws and may have also violated IRS regulations.

City Attorney’s False Claims Investigation – July 2006 - ongoing
The City Attorney’s Office initiated a mandatory investigation into the separate actions of Kroll Inc. and SDCERS which may have violated the California False Claims Act, which requires accountability from those filing payment claims to the City of San Diego that are known to be false. Investigations will focus on Kroll’s \$20 million payments, and pension payments made to SDCERS.

- Indictments have been handed down as the result of investigations that have concluded wrongdoing. These include:

July 7, 2005-The San Diego District Attorney named the following in her criminal indictments regarding the 2002 pension vote. Felony charges are based on violations of Government Code Section 1090 which states that, “city officers or employees shall not be financially interested in any contract made by them in their official capacity or by anybody or board of which they are members. Those indicted include:

Ron Saathoff, President of San Diego City Firefighters Local 145; John Torres, Vice President of the Municipal Employees Association; former City of San Diego Human Resources Director Cathy Lexin; former City Treasurer Mary Vattimo; former acting City Auditor Terri Webster; and City Management Analyst Sharon Wilkinson.

January 6, 2006- A federal grand jury brought criminal charges, including conspiracy to commit wire and mail fraud; wire fraud; mail fraud; and aiding and abetting. The U.S. Attorney named the following in the indictments:

Ronald Saathoff President of San Diego City Firefighters Local 145; former City of San Diego Human Resources Director Cathy Lexin; SDCERS Board president, Lawrence Grisson; SDCERS General Counsel Loraine Chapin; and former acting City Auditor Terri Webster.